

Chairman McCain, Senator Hollings, and Members of the Committee, I would like to thank you, on behalf of America Online, for the opportunity to discuss proposed legislative responses to the issue of online privacy.

From the very beginning, we at AOL realized that this medium would not grow, and our company would not succeed, unless our members were confident in their privacy and security online. That's why protecting our members' privacy has always been one of our top priorities at AOL and why we have dedicated significant time, energy, and resources to establishing one of the industry's strongest privacy policies and educating our members about this issue.

Online privacy has gained increasing attention in recent months, as the Internet has become a central part of the lives of more and more Americans. As consumers demand the power of the PC on their TVs, the convenience of interactivity on their TVs, and the mobility to take the Internet with them on their wireless and other personal devices, it is becoming clear that Internet-oriented interactivity will become an integral and seamless aspect of how we live in a modern society. This rapid, consumer-driven environment requires industry to know more about their consumers than in the past in order to serve them better and at lower cost and with the products and services they want. Gone are the days when a manufactured good was delivered through a tiered distribution system into the hands of distant and anonymous customers. In the future, many services will be delivered completely online and the service provider and customer will have an almost intimate relationship. In that environment, businesses will be under increasing pressure to be responsive but will also be necessarily entrusted with more personal information about their customers. This is all to the good

... for consumers, for our economy and for our society. But in that environment we, as a society, must recognize that businesses will have a greater responsibility than in the past for the proper treatment and handling of customer's personal information, and for ensuring that consumers are fully informed about just what corporate policies and practices are. With that in mind, we are happy to be participating in this important national debate, and we believe that we have reached a critical point at which industry and government must take the next step together in order for us to get to where we need to be on privacy.

AOL is proud to have been a leader on a wide range of industry-based efforts to address privacy issues. We were founding members of the Online Privacy Alliance and NetCoalition and are strong supporters of TRUSTe, BBB *OnLine*, the DMA, and other efforts to set a high corporate standard for privacy protection. We also were an early supporter of P3P, a technology being developed by the World Wide Web Consortium that will empower consumers to set their own privacy preferences as they surf the Web. And we have worked in our role as Co-Chair of the Global Business Dialogue on Electronic Commerce (GBDe) to promote strong privacy practices by companies around the world, because we believe that the issue of privacy knows no borders and must be addressed with its global impact in mind.

Within our own company, AOL has worked hard to develop privacy policies based on the input we've received from our members over the years. Because consumers want to control their own privacy -- rather than having their privacy options dictated by government or private industry -- we've created a privacy policy that clearly explains to our members what information we collect, why we collect it, and how they can exercise choice about the use and disclosure of that information. We have described our privacy policy in detail in recent testimony before this

Committee, so I will not discuss all of the specifics again here. I would just emphasize that the cornerstone of our policy is that we give our members clear choices about whether and how we use their personal information, we make those choices easy to find and easy to exercise, and we make sure that our members are well informed about what those choices are.

AOL's privacy commitment is company-wide. We have a designated official within the company who is devoted to ensuring privacy compliance among all of our brands, and we have integrated privacy criteria into the review process for new products. We also make sure that our policies are well understood and properly implemented by our employees. We require all employees to agree to abide by our privacy policy, and we limit employee access only to member information needed for their jobs.

AOL takes extra steps to protect the safety and privacy of children online. To protect our youngest members, we have created a special environment just for children—our “Kids Only” area—where extra protections are in place to ensure that our children are in the safest possible environment. Furthermore, through AOL's “Parental Controls,” parents are able to protect their children's privacy by setting strict limits on whom their children may send e-mail to and receive e-mail from online. As you know, AOL supported legislation in the 105<sup>th</sup> Congress to set baseline standards for protecting kids' privacy online—precisely because of the unique concerns relating to child safety in the online environment. We worked closely with Senator Bryan, Chairman McCain, the FTC, and key industry and public interest groups to help pass and implement the Children's Online Privacy Protection Act (COPPA), and we believe the enactment of this bill was a major step in the ongoing effort to make the Internet safe for children.

Because the best privacy protection is an informed consumer, we have dedicated significant efforts to educating our members about the steps they can take to protect their own privacy online. Through Steve Case letters, in-house advertisements, and industry-wide public service campaigns, we have given tens of millions of users helpful tips about keeping their personal information secure. For instance, we encourage our members to check to see whether every site they visit on the Web has posted a privacy policy and to review those policies before giving any information or purchasing any products on those sites. We also help them learn how to protect their passwords and personal information and avoid falling for scams or downloading viruses.

Additionally, we have developed tools to help all Internet users protect their privacy when they surf the Web. Netscape, which is part of the AOL family, has one of the strongest commitments to privacy in the industry, and the newest version of the Netscape browser clearly demonstrates that commitment. Netscape 6.0, which is now in a beta testing phase, includes an exciting new tool called the “Cookie Manager,” which allows users to control the amount of passive information that is collected about them by other companies when they surf the Net. Through that tool, consumers are able to view, edit, or delete any or all of the cookies that are placed on their computers by the websites that they visit; and they can choose for themselves which websites they will accept cookies from and which websites they won’t. Although AOL does not track the movements of our members when they surf the Web, we believe that it is important, given the recent concerns raised about the issue of “online profiling,” to give consumers the ability to control what information they disclose online wherever they go on the Internet. The Netscape Cookie Manager is a timely and effective way to empower consumers to set their own privacy preferences.

We at AOL are proud of the steps we've taken to create a privacy-friendly environment online for our members. We are also committed to fostering best practices among our business partners and industry colleagues. One of the strongest examples of this effort is our "Certified Merchant" program, through which we work with our hundreds of business partners to guarantee our members the highest standards of privacy and customer satisfaction when they visit e-commerce sites through AOL. Under that program, AOL requires every merchant doing business on AOL to adhere to strict consumer protection standards and privacy policies as rigorous as our own.

We've adopted these policies because our business, more than ever, requires us to respond to consumer demands and take privacy seriously in order to build consumer trust in the medium. And we know that many other online businesses feel exactly the same way. That's why AOL helped form the Online Privacy Alliance two years ago. And that's why AOL and NetCoalition.com, a group representing some of the largest and most active online companies, sent a letter to 500 CEOs earlier this year encouraging them to post comprehensive privacy policies based on the key fair information principles, and to fully implement these policies within their companies. The progress that industry has made is real—one thing the FTC online privacy report last May clearly shows is that the proportion of commercial websites posting privacy policies has skyrocketed in less than three years from less than 14% to over 90%—unbelievable progress for an industry that barely existed just a few years ago and which today is demonstrating the most rapid growth in the history of media.

Despite this remarkable progress, it is clear from the level of public concern over privacy that more still needs to be done to broaden consumer confidence in the online medium. Although many industry leaders — including AOL -- have worked hard to build their brands on privacy protection, too many online users are still worried about how their information will be collected and used by other companies doing business online. We believe, therefore, that it is time for

government and industry to move forward together to expand consumer confidence and protect consumer privacy. Although the industry has come a long way in creating and promoting best practices for protecting consumer privacy, we think that legislation can play an important role in setting baseline standards for privacy protection and ensuring that all companies play by the same rules.

But how do we decide what these baseline standards should be? Examining this issue in light of the needs of our own members, we have come to realize that the success that industry has attained thus far in the area of privacy protection is largely attributable to market-led initiatives premised on *notice* and *choice*. The fundamental principle of privacy protection is to inform consumers of personal information practices and give them the ability to determine how that information may be collected, used, and disclosed. These tenets of “notice and choice” are essential to the development of all of the privacy initiatives that AOL undertakes, and guide the efforts of all companies who have made strong commitments to user privacy.

As Congress turns its full attention to this issue next year, we at AOL would therefore ask the Members of this Committee to base their legislative initiatives on these key principles of notice and choice. Furthermore, we believe that the best way to implement these standards is by backing up these basic notice and choice requirements with strong enforcement efforts. This type of solution will allow companies to determine the most effective ways to implement notice and choice under their particular business models, while ensuring that companies do indeed comply with these requirements. In today’s online world, consumer preferences can vary greatly from user to user, and we are in need of a legislative approach that will give consumers the flexibility to express these

preferences on an ever-expanding variety of platforms and devices – from their PCs to their televisions to their handheld wireless devices.

We would suggest that the U.S. securities laws provide a helpful model for this type of enforcement-based approach. Securities disclosure requirements offer flexibility for a variety of business models, but the strong enforcement behind these requirements ensures that companies will provide consumers with honest disclosures about their securities practices. Just as the U.S. financial markets are thriving under this type of enforcement-based model for securities law, so too will e-commerce continue to thrive if Congress enacts an enforcement-based approach to consumer privacy.

It is clear that companies are responding to the increasing marketplace demand for online privacy, and that the tremendous growth of e-commerce reflects positive trends on a variety of consumer protection issues, including privacy. Less than three years ago, many companies had to be convinced to join the OPA and adopt robust privacy policies. Today, these same companies are competing to build the best privacy solutions, have invested millions of dollars in developing privacy technology, and are spending large advertising dollars to distinguish themselves as privacy-friendly. The privacy technology fair sponsored by the Congressional Internet Caucus just two weeks ago gave companies an opportunity to demonstrate some of the exciting tools that are being developed today, as businesses compete to find the best ways to empower consumers to protect their own privacy online. Restrictive regulatory action could very likely curb such market innovation and competition, and discourage creative and flexible approaches to privacy protection.

We think that S. 2928 is a good example of a legislative approach that sets a baseline standard for notice and choice backed by strong enforcement, under which market-driven initiatives and technology innovation can continue to blossom. We commend Senators McCain and Kerry on this Committee -- as well as Senators Abraham and Boxer -- for cosponsoring this bill, which would ensure that all companies live up to these important principles by giving the FTC clear authority to enforce the notice and choice requirements. We believe this type of enforcement-based approach appropriately builds on existing market practices to set a baseline standard for privacy protection.

We are also pleased that many other Members of the Committee have recognized the importance of addressing this issue -- most notably Senators Hollings, Wyden, and Burns. Senators Burns and Wyden have worked hard to craft S. 809, an approach that is based also on the key principles of notice and choice. The bill would ensure that companies provide clear notices to consumers about the personal information being collected and the possible use or disclosure of that information, as well as providing an easy-to-use mechanism for limiting the use and disclosure of that information. We are concerned that this bill would delegate broad rulemaking authority to the FTC, which could have an adverse impact on competition and technology innovation in the privacy space.

S 2606, drafted by Senator Hollings, is one of the most comprehensive privacy proposals introduced to date. However, we respectfully disagree with the approach taken by this particular bill, and hope to have the opportunity to work further with Senator Hollings next year on possible modifications to the proposal. S. 2606 recognizes the importance of ensuring that companies provide consumers with meaningful notice and choice with respect to the collection and use of their personal information. However, this bill mandates that the choice mechanism provided to consumers be based on an "opt-in" model.



While we agree with Senator Hollings that consumers should be provided with meaningful choice, we believe that it is not appropriate for all types of consumer information to be forced into the opt-in model in all circumstances. In the diverse online marketplace, we believe it is impossible to mandate a “one-size-fits-all” solution to consumer choice, and we should ensure that the legal framework for online privacy is flexible enough to accommodate the diversity in the online world.

We commend the efforts of all of the Members of this Committee, and are particularly pleased that each of the approaches includes a provision that would preempt inconsistent state law so that companies would not be subject to a potential patchwork of contradictory privacy requirements. We look forward to working with you next year, Mr. Chairman, along with the other members of this Committee and other Members of Congress, as you consider the appropriate legislative approach to protecting online privacy, because we believe that baseline privacy protections are important both to consumers and to the continued growth of the Internet.

At AOL we recognize that the power of the Internet can only be fully realized if consumers feel confident that their privacy is properly protected when they take advantage of the many benefits that this medium has to offer. If consumers do not feel secure online, they will not engage in online commerce or communication—and without this confidence, our business cannot continue grow. For this reason, the borderless environment that is the Internet needs privacy solutions that are workable and can scale across state and national boundaries, while encouraging technology solutions that hold the greatest promise for user empowerment. Most of all, we must balance privacy initiatives with consumers’ desire for personalization, customization and the other exciting benefits of the interactive medium, so that consumers can choose for themselves what kind of online experiences they want to enjoy.

As you continue your work on this issue next year, we urge you to consider the risks of any over-regulatory approach and the need for a solution that is flexible enough to sustain diverse business models, encourage user-friendly consumer interfaces, accommodate widely varying consumer preferences, and allow for rapid changes in technology, platforms, and services. The time has come for us to work together to find an effective legislative approach to online privacy protection. We at AOL are ready for that challenge, and look forward to working with all of you next year to build a solution that works for all of us. Thank you.